

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20673
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

This case arises from a timely protest of a State Tax Commission staff decision adjusting the property tax reduction benefit for 2007. This matter was submitted for a decision based on the documents in the file. The State Tax Commission has reviewed the file and makes its decision.

The amount of the property tax reduction benefit depends on the income received by a claimant and the claimant's spouse--the greater the income, the smaller the benefit. [Redacted] filed a property tax reduction benefit application on March 16, 2007.

The staff routinely reviews the applications petitioners submit to the county where they live. During this process, the staff examined the petitioner's application and the attached documents. The petitioner's application shows she is married. However, the petitioner's husband's income was not listed in the application. The staff notified the petitioner of the intent to deny her benefit for 2007 because the income information did not appear to be complete.

The petitioner responded with a letter wherein she expressed frustration with the determination. She sent a copy of a Decree of Legal Separation dated November 22, 2006, a copy of a Decree of Divorce dated July 20, 2007, and a copy of a Quitclaim Deed transferring [Redacted] share of the property to the petitioner signed on June 30, 2006. She asked if she could send [Redacted] income information to complete her application.

The petitioner's file was transferred to the Legal/Tax Policy Division for administrative review. Idaho Code § 63-701 states in pertinent part:

63-701. DEFINITIONS. As used in this chapter:

(1) **"Claimant" means a person who has filed a claim** under the provisions of sections 63-701 through 63-710, Idaho Code. Except as provided in section 63-702(2), Idaho Code, on January 1 of the year or before April 15 in which the claim was filed a claimant must be an owner of a homestead and be:

- (a) Not less than sixty-five (65) years old; or
- (b) A child under the age of eighteen (18) years who is fatherless or motherless or who has been abandoned by any surviving parent or parents; or
- (c) A widow or widower; or
- (d) A disabled person who is recognized as disabled by the social security administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United States Code; or
- (e) A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States veterans administration; or
- (f) A person, as specified in 42 U.S.C. 1701, who was or is entitled to receive benefits because he is known to have been taken by a hostile force as a prisoner, hostage or otherwise; or
- (g) Blind.

(2) "Homestead" means the dwelling, owner-occupied by the claimant as described in this chapter and used as the primary dwelling place of the claimant and may be occupied by any members of the household as their home, and so much of the land surrounding it, not exceeding one (1) acre, as is reasonably necessary for the use of the dwelling as a home. It may consist of a part of a multidwelling or multipurpose building and part of the land upon which it is built. "Homestead" does not include personal property such as furniture, furnishings or appliances, but a manufactured home may be a homestead.

(3) **"Household" means the claimant and the claimant's spouse.** The term does not include bona fide lessees, tenants, or roomers and boarders on contract. "Household" includes persons described in subsection (8)(b) of this section.

(4) **"Household income" means all income received by the claimant and, if married, all income received by the claimant's spouse, in a calendar year.** (Emphasis added.)

Idaho Code § 63-701 uses definitions to describe eligibility and income requirements for an applicant to qualify for a property tax reduction benefit. These definitions are not the same definitions used in other sections of the Idaho Code or even in the common dictionary. However, the definitions are very specific.

The law must be followed as written. If the law is socially or economically unsound, the power to correct it is legislative, not within the powers of the Tax Commission. John Hancock Mutual Life Insurance Co. v. Neill, 79 Idaho 385, 319 P.2d 195 (1957).

In the present case, the petitioner filed the claim. She is the claimant. The household is defined as the claimant and the claimant's spouse. Household income is defined as the income received by the claimant and, if the claimant is married, the claimant's spouse. The fact that the petitioner and her husband lived apart does not change the requirement to include all income received by both spouses when considering eligibility for the benefit.

The petitioner reported social security of \$5,802 and a pension of \$2,392. However, records available to the State Tax Commission show the pension amount as \$2,377. When [Redacted] income is added to the petitioner's income and both the petitioner's and [Redacted] Medicare premiums and other medical expense are subtracted, the petitioner's net income for the purpose of the property tax reduction benefit is \$24,684. The petitioner qualifies for a property tax reduction benefit of an amount not to exceed **\$350**.

The State Tax Commission is aware there is some potential this decision could cause a hardship to the property tax reduction applicant in certain circumstances. The proper jurisdiction

to handle such hardship situations falls with the County Commissioners pursuant to Idaho Code § 63-711.

WHEREFORE, the decision of the State Tax Commission staff to deny the property tax reduction benefit is hereby MODIFIED and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

An explanation of the petitioner's right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2007, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.